

1 William J. Rutzick (WSBA No. 11533)
2 Kathryn Goater (WSBA No. 9648)
3 Schroeter Goldmark & Bender
4 810 3rd Avenue, 5th Fl.
5 Seattle, WA 98104
6 Tel.: 206-622-8000; Fax: 206-682-2305

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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JAMES H. JENSEN, CLERK
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7 Law Office of David N. Mark (WSBA No. 13908)
8 Central Building, Suite 500
9 810 Third Avenue
10 Seattle, WA 98104
11 Tel.: 206-340-1840; Fax: 206-340-1846

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON

14 MARIA CHAVEZ, RANULFO GUTIÉRREZ, PAZ
15 ARROYO, ANTONIO MARTINEZ, SILVERIO
16 DIAZ, individually and as class
17 representatives,

CLASS ACTION

CT - 01

No. - 5093 - EFS

Plaintiffs,

v.

COMPLAINT FOR FAIR LABOR
STANDARDS ACT AND MINIMUM
WAGE ACT VIOLATIONS

18 IBP, inc., LASSO ACQUISITION
19 CORPORATION, and TYSON FOODS, INC.,
20 all Delaware Corporations,

Defendants.

21 Jurisdiction

22 1. The Court has jurisdiction pursuant to 28 U.S.C. §1331 and
23 29 U.S.C. §216(b) over plaintiffs' Fair Labor Standards Act, 29
U.S.C. §§ 201-219 ("FLSA") claims. The Court has supplemental
jurisdiction pursuant to 28 U.S.C. §1367 over plaintiffs' state law
claims which are based on the Minimum Wage Act, RCW chapter 49.46
("MWA"), Industrial Welfare Act, RCW chapter 49.12, Wages-

COMPLAINT FOR MINIMUM WAGE ACT AND
FAIR LABOR STANDARDS ACT VIOLATIONS - Page 1

ORIGINAL

LAW OFFICE OF
DAVID N. MARK
CENTRAL BUILDING, SUITE 500
810 THIRD AVENUE
SEATTLE, WA 98104
(206) 340-1840 FAX (206) 340-1846

1 Deductions-Contribution-Rebates Act, RCW chapter 49.52 and
2 regulations issued thereunder.

3 **Parties**

4 2. Plaintiffs Maria Chavez, Ranulfo Gutierrez, Paz Arroyo,
5 Antonio Martinez, Silverio Diaz are adults employed at defendants'
6 Pasco, Washington plant and have been so employed during the three
7 years prior to the filing of this complaint.

8 3. Defendant IBP, inc. was and, on information and belief,
9 may still be a Delaware Corporation headquartered in Dakota Dunes,
10 South Dakota, and registered to do business in Washington State. It
11 was and, on information and belief, may still be the world's largest
12 producer of fresh beef, pork and related allied products. It has
13 operated and, on information and belief, may still be operating a
14 beef slaughtering and processing plant that it commonly refers to
15 the Pasco plant.

16 4. Defendant Lasso Acquisition Corporation ("Lasso") is a
17 recently-created wholly-owned subsidiary of defendant Tyson Foods,
18 Inc. ("Tyson"), both of them being Delaware Corporations registered
19 to do business in Washington State. On information and belief,
20 Lasso recently acquired a majority of the shares of IBP, inc., is
21 merging or has merged IBP, inc. into Lasso and/or Tyson, and Lasso
22 and/or Tyson are operating or will soon be operating what was IBP,
23 inc. as the IBP Fresh Meat Division of Tyson Foods, Inc. On

1 information and belief, Lasso and/or Tyson are or soon will become
2 successors to the IBP, inc.'s rights and liabilities, including
3 federal and state wage and hour law liabilities.

4 **Facts**

5 5. Plaintiffs have been employed by defendants at their Pasco
6 plant during all or part of the period from November 2, 1998 to the
7 present time. Defendant IBP, inc. was the plaintiffs' employer
8 through September 28, 2001, and, thereafter, upon information and
9 belief plaintiffs have been and continue to be jointly employed by
10 the defendants.

11 6. Plaintiffs' employment by defendants has been as part of
12 an enterprise engaged in commerce and in the production of goods for
13 commerce, as these terms are used in Sections 6 and 7 of the FLSA,
14 29 U.S.C. §§ 206-207.

15 7. Plaintiffs have performed and continue to perform unpaid
16 work each morning, including, but not limited to, activities such as
17 donning protective equipment (wire mesh gloves, wire mesh aprons,
18 protective sleeves, rubber gloves, cloth gloves, plastic gloves,
19 safety boots, scabbards, hard hats, safety glasses, hairnet,
20 earplugs and other equipment), receiving and donning outer gloves,
21 obtaining sand paper, obtaining knives, sanding their steel
22 (equipment used to sharpen knives), waiting in line during these
23 previous activities, and performing production floor work.

1 8. Defendants deduct thirty-minute meal periods from
2 plaintiffs' pay, even though a substantial amount of their meal
3 period is devoted to work activities such as production floor work
4 after the start of the meal period, doffing safety equipment and
5 related garments, cleaning themselves and equipment, donning safety
6 equipment and related garments, and returning to work on the
7 production floor prior to the end of the thirty-minute meal period.

8 9. Plaintiffs work 8 hours or more in a day without receiving
9 a second paid rest break.

10 10. Plaintiffs perform unpaid work after the official end of
11 the paid work day, including but not limited to activities such as
12 completing production floor work, doffing safety equipment and
13 related garments, cleaning safety equipment, bagging gloves and
14 garments, storing safety equipment in lockers and waiting in line at
15 various steps in the above-described process.

16 11. Plaintiffs clock in at or near the beginning of the
17 workday and clock out at or near the end of their workday, but are
18 paid based on the official start and stop time, which excludes work
19 performed before and after official hours.

20 12. Much of plaintiffs' off-the-clock work is performed in
21 workweeks in which plaintiffs work in excess of forty hours.

22 13. The events described hereinabove continue at the time of
23 the complaint, and, on information and belief, will continue.

1 14. Defendants have been and continue to willfully violate
2 state and federal wage and hour statutes and regulations with the
3 intent to deprive plaintiffs of a part of their wages.

4 15. Defendants have been engaged in extensive similar
5 litigation, including *Alvarez et al. v. IBP*, No. CT-98-5005 RHW
6 (U.S. Dist. Ct. E.D. Wa.) (*Alvarez*), that has resulted in a final
7 judgment dated September 14, 2001 and supports collateral estoppel
8 on issues in this case.

9 16. *Alvarez* involved the same issues and IBP plant as involved
10 in this case. *Alvarez* only covered damages through May 14, 2000.
11 In addition, *Alvarez* involved only 815 individuals who affirmatively
12 opted into the case. While the present class includes many of the
13 *Alvarez* class members, it also includes approximately 1,500 or more
14 individuals who were not *Alvarez* class members.

15 17. Plaintiffs Maria Chavez and Ranulfo Gutierrez were named
16 plaintiffs and class representatives in *Alvarez*. Plaintiff Antonio
17 Martinez was an *Alvarez* class member. *Alvarez* is res judicata to
18 the *Alvarez* class members and named plaintiffs as to class work
19 performed through May 14, 2000, the end of the damages period.

20 18. Plaintiff Paz Arroyo performed slaughter division work
21 that was included as *Alvarez* class work, but did not opt into the
22 *Alvarez* case. Plaintiff Silverio Diaz performed Hides Division work
23 that was not part of the *Alvarez* class action.

Class Facts

19. Plaintiffs file this action on behalf of themselves and a class defined as follows:

All individuals performing production work in the Pasco plant processing, slaughtering, and hides divisions, during any time between November 2, 1998 to the present time, excluding supervisors, managers, quality control employees, guards, mechanics, laundry room employees, janitors, knife room employees, and packaging department employees whose jobs are limited to work performed after the product has been bagged and boxed.

20. Class members are employed and have been employed by defendants during the past three years in an enterprise engaged in commerce and in the production of goods for commerce, as these terms are used in Sections 6 & 7 of the FLSA, 29 U.S.C. §§ 206-207.

21. Class members performed and continue to perform unpaid work each morning, including, but not limited to, activities such as donning protective equipment (wire mesh gloves, wire mesh aprons, rubber aprons, protective sleeves, rubber gloves, cloth gloves, plastic gloves, safety boots, scabbards, hard hats, safety glasses, hairnets, ear plugs and other equipment), receiving and donning outer gloves, obtaining sand paper, obtaining knives, sanding their steel (equipment used to sharpen knives), waiting in line during these previous activities, and performing production floor work. Their work begins shortly after arriving in the plant.

1 22. Class members have thirty minute meal periods deducted
2 from their pay, even though a substantial amount of their meal
3 period is devoted to work activities such as production floor work
4 after the start of the meal period, doffing safety equipment and
5 related garments, cleaning themselves and equipment, donning safety
6 equipment and related garments, and returning to work on the
7 production floor prior to the end of the thirty-minute meal period.

8 23. Class members work 8 hours or more in a day without
9 receiving a second paid rest break.

10 24. Class members perform unpaid work after the official end
11 of the paid work day, including but not limited to activities such
12 as completing production floor work, doffing safety equipment and
13 related garments, cleaning safety equipment, bagging gloves and
14 garments, storing safety equipment in lockers and waiting in line at
15 various steps in the above-described process. Their work ends
16 shortly before they leave the plant.

17 25. Class members clock in at the beginning of their work day
18 and clock out at the end of their work day, but are nonetheless paid
19 based on the official start and stop time, plus 4 minutes for pre-
20 shift and post-shift work. However, the pre-shift, post-shift and
21 meal break work greatly exceeds 4 minutes.

22 26. Much of the class members' off-the-clock work is performed
23 in workweeks in which class members work in excess of forty hours.

1 27. The events described hereinabove were continuing at the
2 time of filing of the complaint, and, on information and belief,
3 will continue.

4 28. Defendants have been and continue to willfully violate
5 state and federal wage and hour statutes and regulations with the
6 intent to deprive class members of a part of their wages.

7 29. Defendants have been engaged in extensive similar
8 litigation, including *Alvarez et al. v. IBP*, No. CT-98-5005 RHW
9 (U.S.Dist.Ct. E.D.Wa.) (*Alvarez*) that resulted in a final judgment
10 dated September 14, 2001 supporting collateral estoppel on issues in
11 this case.

12 30. *Alvarez* involved the same issues and IBP plant as involved
13 in this case. *Alvarez* only covered damages through May 14, 2000.
14 In addition, *Alvarez* involved only 815 individuals who affirmatively
15 opted into the case. While the present class includes many of the
16 *Alvarez* class members, it also includes approximately 1,500 or more
17 individuals who were not *Alvarez* class members.

18 31. The proposed class numbers in excess of 2,000 individuals
19 and, therefore, joinder of all members is impracticable.

20 32. There are questions of law and fact common to the class.

21 33. Virtually all legal issues in this case will be common
22 class issues, such issues as state law lunch and rest break issues,
23 legal similarities and dissimilarities between the MWA and FLSA,

1 FLSA work and Portal-to-Portal act issues, FLSA meal break issues,
2 interpretation of 29 U.S.C. §203(o), deference to be given Wage and
3 Hour Division Opinion letters relative to packaging plant work in
4 December 1997 and January 2001, collateral estoppel and res judicata
5 issues based on *Alvarez et al. v. IBP*, corporate law and FLSA
6 successorship and joint employment issues arising out of IBP, inc.
7 acquisition and merger, legal issues raised by affirmative defenses
8 advanced by defendants, plaintiffs' right to conduct videotaping and
9 expert evaluations inside the plant, and other legal issues which
10 will arise during this litigation.

11 34. Class members share numerous common issues of fact,
12 involving matters such as amounts of time it takes to do various
13 activities, the time that production floor work begins and ends in
14 relation to paid starting and stopping time, liability and damages
15 issues which will be tried applying MWA and FLSA principles of
16 representative evidence, and the willfulness of defendants'
17 violations for purposes of RCW 49.52.050 & .070 exemplary damages
18 and the FLSA 3-year statute of limitations, 29 U.S.C. §255.

19 35. For example, class member claims will depend on production
20 of common documents, such as electronic payroll records, job
21 classification equipment lists, electronic time card data, and
22 common company policies relative to equipment usage, sanitation,
23

1 bathroom usage and other policies, these common documents subject to
2 Fed.R.Civ.P. 26(a)(1) initial disclosures.

3 36. The claims of the representative parties are similar to
4 the class claims. See allegations supra and infra.

5 37. The named plaintiffs will fairly and adequately protect
6 the interests of the class and have made arrangements with
7 experienced counsel to represent the class members with vigor and
8 zeal within the bounds of the law. Counsel have extensive wage and
9 hour class action litigation experience, including representing the
10 plaintiffs in *Alvarez et al. v. IBP*.

11 38. The questions of law and fact common to the members
12 predominate over any questions affecting only individual members,
13 particularly in light of the rules of representative evidence and
14 the relaxed burdens of proof in MWA and FLSA cases.

15 39. A class action is superior to other available methods for
16 the fair and efficient adjudication of the controversy.

17 40. Individual class members have little interest in
18 individually controlling the prosecution of their claims given the
19 relatively small amounts of each claim, their relative lack of
20 sophistication, and the difficulties involved in bringing individual
21 litigation against one's current employer.

1 41. Plaintiffs are unaware of any other litigation concerning
2 this controversy commenced by or for other class members, except for
3 the Alvarez class action litigation, discussed *supra*.

4 42. This litigation should be concentrated in this forum
5 because all class members were employed in defendants' Pasco plant,
6 located within this forum.

7 43. The Court has the resources, abilities and procedures to
8 effectively manage this class action, particularly with application
9 of the substantive wage and hour law of representative evidence and
10 relaxed burdens of proof.

11 44. Defendants have been and continue to willfully violate
12 state and federal wage and hour statutes and regulations with the
13 intent to deprive class members of a part of their wages and
14 continues to do so.

15 **First Claim - State Wage and Hour Law Violations**

16 45. Plaintiffs repeat and reallege the prior allegations of
17 the complaint as if repeated completely.

18 46. Defendants violate RCW 49.46.020 by permitting unpaid work
19 to be performed prior to the start of the paid workday and after the
20 end of the paid workday.

21 47. Defendants violate RCW 49.46.130 by permitting plaintiffs
22 and class members to perform off-the-clock overtime work, i.e.,
23

1 unpaid work performed by an employee who has worked in excess of
2 forty hours during a week.

3 48. Defendants violate RCW 49.46.020, RCW 49.46.130, RCW
4 49.12.005 and WAC 296-126-092 by failing to pay for meal breaks that
5 are less than 30 minutes, the minimum length for an unpaid meal
6 break under state law.

7 49. Defendants violate RCW 49.12.005 and WAC 296-126-092 by
8 failing to provide a second 10-minute rest break on days when
9 plaintiffs work 8 hours or more.

10 50. The above-described state law wage and hour violations
11 were committed willfully and with intent to deprive class members of
12 wages and thus violate RCW 49.52.050 and RCW 49.52.070.

13 **Second Claim - Fair Labor Standards Act Violations**

14 51. Plaintiffs repeat and reallege the prior allegations of
15 the complaint.

16 52. Plaintiffs and class members are similarly situated with
17 regard to the claims made in this complaint.

18 53. Defendants violate the overtime provisions of Section 7 of
19 the FLSA, 29 U.S.C. §207, by permitting unpaid overtime work,
20 including unpaid overtime work prior to the start of the paid work
21 day, during meal periods that do not qualify as bona fide meal
22 periods pursuant to FLSA regulations and case law, and after the end
23 of the paid work day.

Prayer for Relief

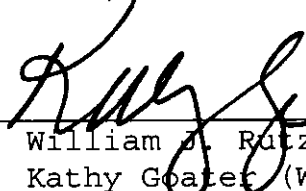
Wherefore, plaintiffs, individually and on behalf of the class, pray for relief against each defendant as follows:

1. With regard to the state law claims, plaintiffs pray for Fed.R.Civ.P. 23(b)(2) and 23(b)(3) class certification, damages, exemplary damages, prejudgment interest, costs, attorney fees pursuant to RCW 49.46.090, RCW 49.48.030, RCW 49.52.070 and equitable grounds, and for such other and further relieve as the Court deems just, equitable and within its powers to grant against;

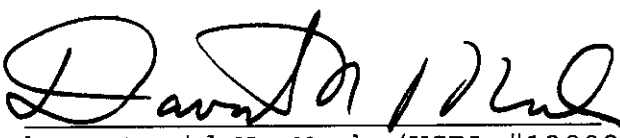
2. With regard to the FLSA claims, plaintiffs pray for FLSA class certification pursuant to 29 U.S.C. §216(b), damages, liquidated damages, prejudgment interest, costs, attorney fees pursuant to 29 U.S.C. § 216(b), and such other and further relief as the Court deems just, equitable and within its powers to grant.

DATED this 2nd day of November, 2001.

SCHROETER, GOLDMARK & BENDER


by: William J. Rutzick (WSBA# 11533)
Kathy Goater (WSBA# 9648)

LAW OFFICE OF DAVID N. MARK


by: David N. Mark (WSBA #13908)
Attorneys for the Plaintiffs